IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

Writ Petition No.10488 of 1997

DATED 18-4-2007

BETWEEN

Deputy Executive Engineer,
S&M Sub Division, Vamsadhara Project,
Hiramandalam,
Srikakulam District

.. Petitioner

And

D.Appa Rao and another.

.. Respondents

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.10488 of 1997

ORDER:

On 4.4.2007, since none appeared on behalf of the 1st respondent, after hearing the learned Government Pleader for Irrigation on behalf of the petitioner, the matter was directed to be posted for judgment. Today, though the matter is listed under the caption 'for judgment', neither is the counsel for the 1st respondent present nor is there any representation on his behalf.

The award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam in I.D.No.59 of 1991 dated 25.9.1996 is impugned

in this writ petition. The Industrial Tribunal directed the petitioner herein to reinstate the 1st respondent without back wages and without continuity of service within a period of two months from the date of receipt of a copy of the order on a dispute being referred to the Tribunal as to whether the Deputy Executive Engineer, S&M Sub-Division, Vamsadhara Project, Heeramandalam was justified in terminating the services of the workman and if so to what relief the workman was entitled to.

The workman, in his claim statement, contended that he had worked from 1972-78 continuously, that he was removed from service in November 1978 without notice and without payment of compensation; that while his juniors were retained and fresh workmen were appointed, he was denied the opportunity of even being reemployed. The 1st respondent contended that his termination was in violation of Section 25-F and H of the Industrial Disputes Act, 1947 (for short 'the Act').

In the counter filed on behalf of the petitioner herein, while denying the allegations in the claim statement, it was stated that the 1st respondent had worked only for 208 days, as mentioned in the list attached to the rejoinder, on daily wage basis as casual labour and that he was employed as and when work load arose. According to the petitioner, the 1st respondent did not work for the statutory period in a calendar year and he was not entitled for notice and compensation or for reinstatement and back wages. The workman examined himself as WW.1 whereas on behalf of the petitioner herein, Sri A.Shanmukha Rao was examined as M.W.1. Except

marking a copy of the conciliation report of the Assistant commissioner of Labour as Ex.W.1, no documentary evidence was adduced either on behalf of the 1st respondent workman or on behalf of the petitioner herein.

The Industrial Tribunal, while noting the deposition of M.W.1 that 'as per records the workman had worked for few days in 1973 and 1974 as stated in the list filed along with the rejoinder as NMR on daily wage basis and not for 240 days in any calender year', held that since the records were not produced by the management despite receipt of notice calling upon the petitioner herein to produce the records, an adverse inference had to be drawn against the petitioner and in favour of the 1st respondent workman and that it must be held that the 1st respondent had worked with the petitioner herein from 1972-75 continuously and not intermittently for a few days as pleaded by the petitioner. The Tribunal believed the evidence of WW1 and held that the 1st respondent workman had worked from 1972-75 for more than one year continuously and was therefore entitled for notice pay and retrenchment compensation as per Section 25-F of the Act. While holding that the 1st respondent was entitled to be reinstated, the Tribunal held that it was highly improbable that the 1st respondent who was earning his livelihood by working as a labourer on daily wage basis is still working as such and since he did not pursue his legal remedies within a reasonable time and had allowed a long time to elapse, it was just and proper that back wages be denied.

It is well settled by a catena of judgments in **Manager,**

Reserve Bank of India, Bangalore v S. Mani[1]; **Batala Coop. Sugar Mills Ltd v. Sowaran Singh**[2] .; **Surendranagar District Panchayat v. Dahyabhai Amarsinh**[3]; **Chief Engineer (construction) v. Keshava Rao (dead) by Lrs**[4] **; Range Forest Officer v. S.T.Hadimini**[5] that the burden, to prove that he had put in a minimum of 240 days service during the period of 12 months prior to the date of his termination, is on the workman and in the absence of the petitioner having discharged this burden, it cannot be said that the mandatory requirement under Section 25-F is violated

Except for the self-serving oral testimony of the 1st respondent workman, there is no other evidence let in before the Tribunal to establish that the 1st respondent had worked for more than 240 days continuously in the 12 months period preceding his termination. The very fact that the 1st respondent had raised a dispute in 1990, nearly 12 years after his alleged termination, would be reason enough to disentitle him to the relief sought for on the ground of inordinate delay or laches as the 1st respondent has not shown any cause, much less sufficient and reasonable cause, for the inordinate delay in raising the dispute. Since the 1st respondent workman failed to establish, with cogent evidence, that his services were terminated contrary to Section 25-F of the Act, the award of the Labour Court directing that he be reinstated into service without continuity of service and without back wages must be quashed.

The writ petition is allowed. However, in the circumstances,

without costs.

RAMESH RANGANATHAN,J

Dt: 18.4.2007
msv.

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[1] (2005) 5 SCC 100
[2] (2005) 8 SCC 481
[3] (2005) 8 SCC 750
[4] (2005) 11 SCC 229
[5] (2002) 3 SCC 25